

The Vice-Chairman, Marcia Gies, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M., on Tuesday, October 21, 2003 in Council Chambers at City Hall.

PRESENT: Christopher Fejes  
Marcia Gies  
Michael Hutson  
Matthew Kovacs  
Mark Vleck (7:35 P.M.)

ALSO PRESENT: Mark Stimac, Director of Building & Zoning  
Carolyn Glosby, Assistant City Attorney  
Pamela Pasternak, Recording Secretary

ABSENT: Kenneth Courtney  
Mark Maxwell

Motion by Fejes  
Supported by Kovacs

MOVED, to excuse Mr. Courtney and Mr. Maxwell from attendance at this meeting.

Yeas: All – 5

**MOTION TO EXCUSE MEMBERS CARRIED**

Ms. Gies explained to the audience that if anyone wished, they could ask that their request be postponed due to the fact that there was not a full board present. Mr. Stimac explained that four (4) affirmative votes are required to grant a variance.

**ITEM #1 – APPROVAL OF MINUTES – MEETING OF SEPTEMBER 17, 2003**

Motion by Kovacs  
Supported by Fejes

MOVED, to approve the minutes of the meeting of September 17, 2003 as written.

Yeas: 4 – Fejes, Gies, Hutson, Kovacs  
Abstain: 1 – Vleck

**MOTION TO APPROVE MINUTES AS WRITTEN CARRIED**

**ITEM #2 – JANE WIEGERS, 1054 VERMONT**, for relief of Section 30.10.06 to construct a covered front porch resulting in a 22' front setback to the front face of the porch where a 25' setback is required.

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Yeas: ~~All~~ 5 - Fejes, Gies, Hutson, Kovacs, Vleck

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Ms. Gies explained to the audience that if anyone wished, they could ask that their request be postponed due to the fact that there was not a full board present. Mr. Stimac explained that four (4) affirmative votes are required to grant a variance.

**ITEM #1 – APPROVAL OF MINUTES – MEETING OF SEPTEMBER 17, 2003**

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Supported by Fejes

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Yeas: 4 – Fejes, Gies, Hutson, Kovacs  
Abstain: 1 – Vleck

MOTION TO APPROVE MINUTES AS WRITTEN CARRIED

**ITEM #2 – JANE WIEGERS, 1054 VERMONT**, for relief of Section 30.10.06 to construct a covered front porch resulting in a 22' front setback to the front face of the porch where a 25' setback is required.

**ITEM #2 – con't.**

Mr. Stimac explained that the petitioner is requesting relief of Section 30.10.06 of the Zoning Ordinance to construct a covered front porch, which would result in a 22' front setback to the front face of the porch roof. Section 30.10.06 requires a 25' minimum front setback in R-1E Zoning Districts.

Ms. Wieggers was present and stated that her home was constructed in the 1940's and the porch has always been there. Mr. Fejes asked why she wished to cover the porch and Ms. Wieggers said that she would like to be able to sit outside in the summer and also that a covered porch would protect the porch in inclement weather.

Ms. Gies opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are four (4) written approvals on file. There are no objections.

Mr. Vleck said that he felt this was a minimal setback request and would be in support of this variance. Mr. Hutson agreed with Mr. Vleck adding that this home existed prior to any setback requirements in the Zoning Ordinance.

Motion by Fejes  
Supported by Hutson

MOVED, to grant Jane Wieggers, 1054 Vermont, relief of Section 30.10.06 of the Zoning Ordinance to construct a covered front porch resulting in a 22' front setback to the front face of the porch where a 25' setback is required.

- Variance request is minimal.
- Variance is not contrary to public interest.
- Variance would not have an adverse effect to surrounding property.

Yeas: All – 5

MOTION TO GRANT VARIANCE CARRIED

**ITEM #3 – JAMES HARRIS, 2888 BINBROOKE**, for relief of Section 30.10.02 to construct a master suite addition on the west side of his home, which would result in a 6'-2" side yard setback where a minimum 10' minimum side yard setback is required.

The Vice-Chairman moved this item to the end of the agenda, Item #15, to allow the petitioner the opportunity to be present.

**ITEM #4 – MR. & MRS. GARY BUSSA, 3851 VICTORIA**, for relief of Section 30.10.04 to construct a covered front porch, which would result in a 28'-4" front setback where 30' is required.

Mr. Stimac explained that the petitioners are requesting relief to construct a covered front porch to their home. The site plan submitted indicates the construction of a covered front porch with a proposed 28'-4" front setback. Section 30.10.04 requires a 30' minimum front setback in R-1C Zoning Districts.

Mrs. Bussa was present and stated that their home faces East and the only place that they have shade in the evening is at the front of the home. Mrs. Bussa said that they have planted many trees in the back yard but said that they will not provide much shade for many years. Mrs. Bussa also said that most of the homes in this area look very similar and they would like to add some diversity to the look of the neighborhood. The Bussas have contacted their neighbors as well as the Homeowners Association and have received support for this construction. Mrs. Bussa said that she also inherited a porch swing that is approximately 70 years old and she would like to be able to have a large porch to put this swing.

The Vice-Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are five (5) written approvals on file. There are no written objections on file.

Mr. Kovacs reminded the petitioner that she could ask that this item be postponed before the Board took a vote. The petitioner said she would like a vote tonight.

Mr. Hutson said that he did not have a problem with this variance request.

Motion by Vleck  
Supported by Fejes

MOVED, to grant Mr. & Mrs. Gary Bussa, 3851 Victoria, relief of Section 30.10.04 of the Zoning Ordinance to construct a covered front porch, which would result in a 28'-4" front yard setback where 30' is required.

- Variance request is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Variance applies only to the property in question.
- Variance will not establish a prohibited use in a Zoning District.

Yeas: All – 5

MOTION TO GRANT VARIANCE CARRIED

**ITEM #5 – MR. & MRS. HAILER, 2851 SUNRIDGE**, for relief of Section 40.50.04 to construct a second floor addition continuing an existing non-conforming 9' side yard setback.

Mr. Stimac explained that the petitioners are requesting relief of Section 40.50.04 to construct a second floor addition on an existing non-conforming structure. Section 30.10.02 requires a 10' minimum side yard setback and a 25' minimum total of both side yard setbacks in the R-1B Zoning District. The plot plan submitted indicates the existing house has a 9' side yard setback and 22.3' total side yard setbacks. The proposed second floor addition would continue the 9' non-conforming setback. Section 40.50.04 of the Zoning Ordinance prohibits expansions of non-conforming structures in a way that increases the non-conformity.

Mr. Hailer was present and stated that he did not want to increase the non-conformity by going out from his home, but only wanted to go straight up with this addition so that he would not encroach anymore into the setback. Mr. Hailer also said that next to his property is a vacant lot with approximately a quarter mile of woods that abuts a kennel on Adams Road. Mr. Hailer also said that he maintains an additional amount of grass, which amounts to 21'-2".

Mr. Fejes asked why Mr. Hailer wanted this addition. Mr. Hailer said that they are expecting their second child and the current square footage of their home is 1,795' and they would like to add another bedroom.

The Vice-Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are three (3) written approvals on file. There are no written objections on file.

Mr. Fejes said that he did not have an objection to this request, as there would not be an increase to the non-conformity of the home. Mr. Hutson said that he felt a hardship existed because this lot was pie-shaped, and in fact, if it was a rectangular lot, a variance would not be required.

Motion by Kovacs  
Supported by Hutson

MOVED, to grant Mr. & Mrs. Hailer, 2851 Sunridge, relief of Section 40.50.04 of the Zoning Ordinance to construct a second floor addition, which would continue an existing non-conforming 9' side yard setback.

- Variance is necessary for the preservation and enjoyment of substantial property rights.
- Variance would not have an adverse effect to surrounding property.
- Variance is not contrary to public interest.

**ITEM #5 – con't.**

Yeas: All – 5

**MOTION TO GRANT VARIANCE CARRIED**

**ITEM #6 – MR. JOHN POTVIN, 5648 CLEARVIEW DR.,** for relief of Section 30.10.02 to construct a family room addition, which would result in a 28' rear yard setback where 45' is required.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to construct a family room addition. The site plan submitted indicates a family room addition at the rear of the home with a proposed 28' rear yard setback. Section 30.10.02 requires a 45' minimum rear yard setback in R-1B Zoned Districts.

Mr. John Potvin and his builder, Douglas Ender was present. Mr. Potvin said that they wish to add a family room addition to their home because they do not have a family room, but have a library. Mr. Potvin indicated that they have two adult boys at home who use the library for reading or studying, and they would like to have a family room that they could watch TV in. Mr. Potvin also said that the reason they wished the family room in this area was because it would be right near the kitchen and they would also use part of the deck. Mr. Potvin further explained that this addition would be eight-sided and felt that it would add value to the home.

Mr. Fejes stated that he felt this was a significant variance and did not see a hardship. Mr. Ender stated that the reason this room had to extend this far was because there was an egress window from the bedroom. Mr. Ender said that the roof was lower-pitched in order to continue to have access to this egress window. Mr. Ender also said that this addition was 14' x 14' with a slight breezeway. Mr. Fejes also said that there was an objection on file, which indicated that the neighbor felt that the addition would be taking away from the openness of the area. Mr. Potvin said that this addition would fit in the area where there is now a deck and he did not feel that it would take away from the open space. Mr. Ender said that this addition would only come out an additional three feet from the existing deck.

Mr. Hutson said that he felt that this was a huge variance and does not recall ever granting a variance of this size. Mr. Hutson also said that he did not see a hardship with the land, which would justify a variance of this size. Mr. Hutson further stated that he thought Mr. Potvin might wish to table this request to have the benefit of a full board.

The Vice-Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are two (2) written approvals on file. There is one (1) written objection on file.

**ITEM #6 – con't.**

Mr. Vleck said that he also felt this was a significant variance and he would be apt to deny this request also.

Mr. Fejes stated that he felt that Mr. Potvin would need a hardship to receive this size variance. Mr. Fejes said that he felt that even with a full board a hardship with the land would be required for this variance. Mr. Potvin said that he felt hardship was a difficult word and would rather use the word difficult. Mr. Fejes said that Mr. Potvin is asking the Board to approve his request to “break the law” and as such, a specific reason would be required to justify this request. Mr. Potvin said that he is not asking to “break the law” he just wants a variance.

Mr. Kovacs said that this was a beautiful home, however, 17' is a very large variance request, and he does not believe this lot could support such a large addition. Mr. Kovacs also said that he feels that this variance would be contrary to public interest; and it would cause an adverse effect to surrounding property. Mr. Kovacs also indicated that he did not believe this request would be granted, even if a full board was present.

Motion by Vleck  
Supported by Hutson

MOVED, to postpone the request of Mr. John Potvin, 5648 Clearview Dr., for relief of Section 30.10.02 to construct a family room addition, which would result in a 28' rear yard setback where 45' is required, until the next meeting of November 18, 2003.

- To allow the petitioner the benefit of a full board.

Yeas: 4 – Fejes, Gies, Hutson, Vleck  
Nays: 1 – Kovacs

MOTION TO POSTPONE REQUEST UNTIL MEETING OF NOVEMBER 18, 2003  
CARRIED

**ITEM #7 – DEPOR INDUSTRIES, INC., 1902 NORTHWOOD**, for relief of Section 30.20.09 to construct an addition to an existing industrial building, which would result in 42% lot coverage where 40% maximum is permitted.

Mr. Stimac explained that the petitioners are requesting relief of the Ordinance to construct an addition to an existing industrial building. Section 30.20.09 of the Troy Zoning Ordinance limits the lot coverage of building in the M-1 (Light Industrial) Zoning District to not more than 40% of the lot area. The proposed addition would result in 42% lot coverage on this site. In order to implement this proposed construction the petitioners would also need to obtain a parking variance for 7 parking spaces. This matter will appear before the City Council at their October 27, 2003, meeting.

**ITEM #7 – con't.**

Mr. Paul Ricca, Architect for Depor Industries, Inc. and Mr. Ted Howard, General Manager of Depor Industries were present. Mr. Ricca said that the total building area is 62,900 square feet and would like to add a 3,222 square feet addition to expand the shipping and receiving area, which would result in lot coverage of 41.67% where 40% is allowed. Mr. Howard said that Depor Industries applies protective coating to automotive components, which results in a significant amount of truck traffic in and out of this facility each day. Mr. Howard said that the primary need is a matter of safety, because the shipping and receiving office is in the middle of the building. When drivers come to make a drop off, they need to get to that office and have to cross some of the production area to get to it and they have no where to wait while their trucks are either loaded or unloaded. Mr. Howard said that they also need extra space for the storage of boxes, pallets and that sort of thing.

Mr. Vleck asked what types of trucks come in and out of this facility. Mr. Howard said that there are all types of trucks from pickup trucks to stake trucks to a large trailer. Mr. Vleck asked what type of square footage would be allowed without a variance. Mr. Ricca said he thought it would be around 1600 square feet, which is far less than what they need.

The Vice-Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are no written approvals or objections on file.

Mr. Stimac said that in answer to Mr. Vleck's question under the Ordinance they would be allowed to add 2,647 square feet to this existing building, and are asking for a variance of 575 square feet.

Mr. Fejes asked if they could stay within the Ordinance and add to the shipping area. Mr. Howard said that 2,647 square feet would not allow for all the operations, which are associated with shipping and receiving. Part of the operation would still remain on the production floor, causing a dangerous situation for drivers waiting to load or unload their trucks. Mr. Howard said that their original request would allow an area for the drivers to wait and would also allow the storage of boxes and office equipment, and would also enable them to have the shipping and receiving department in one area of the building. Mr. Fejes asked what was located behind this property and Mr. Howard said that there is nothing there presently and believes the property is owned by the bus depot.

Mr. Kovacs asked what would happen if the variance was not granted. Mr. Ricca said that they had not considered that outcome at this point. Mr. Ricca further stated that this area would create an area for the drivers to wait and if limited to something less than the 3,222 square feet they are asking for, they would have to eliminate either an office or the driver waiting area out of this area. Mr. Ricca also said that there is a



**ITEM #7 – con't.**

severe congestion area in this part of the building and the addition would help to eliminate that. Mr. Kovacs asked how if the addition would be larger if there was not a lot coverage issue. Mr. Howard said that they felt the 3,222 square feet would be sufficient for their needs. Mr. Kovacs asked if this building was leased and Mr. Howard said that Depor Industries owned this building.

Motion by Vleck  
Supported by Fejes

MOVED, to grant Depor Industries, Inc. 1902 Northwood, relief of Section 30.20.09 of the Zoning Ordinance to construct a 3,222 square foot addition to an existing industrial building, which would result in 42% lot coverage where 40% maximum is permitted.

- Variance request is minimal.
- Variance is not contrary to public interest.
- Variance does not establish a prohibited use in a Zoning District.
- Variance will not have an adverse effect to surrounding property.

Yeas: All – 5

MOTION TO GRANT VARIANCE CARRIED

**ITEM #8 – JANET CLARK, 90 WOODSLEE**, for relief of Section 40.57.05 to maintain a detached garage constructed within 3' of the side lot line where 6' is required.

Mr. Stimac explained that the petitioner is requesting relief to maintain a detached garage with a footing that was constructed within 3' of the side yard setback. Section 40.57.05 of the Zoning Ordinance requires a minimum 6' side yard setback for accessory buildings. A contractor hired by the petitioner obtained a permit to construct a new detached garage. The plans submitted with the permit application indicate a 6' setback from the building to the side lot line. The builder, however, poured the footing only 3' from the side lot line. This deficiency was not discovered at the time of the footing inspection and was only discovered after a "Stop Work Order" was placed on the property due to a "insufficient funds" check, which was received from the contractor for payment of the Building Permit.

Ms. Gies had questions regarding the inspection of the slab. Mr. Stimac said that at the time of the rat wall inspection, the discrepancy was not discovered, and the rat wall was approved as put in. Mr. Stimac also indicated that a Building Permit was issued to the builder indicating a 6' side yard setback. The builder put the rat wall in with a 3' side yard setback. Ms. Gies asked whose responsibility it was to meet the setbacks. Mr. Stimac said that it is the responsibility of the contractor to put up the structure according to the approved plans. Ms. Gies then asked why the deficiency was not caught at the

**ITEM #8 – con't.**

first inspection. Mr. Stimac said there were no excuses, and the deficiency should have been discovered at the time of the rat wall inspection before the foundation was poured.

Mr. Hutson asked if the contractor was still working for Ms. Clark. Ms. Clark said that she had hired a contractor with a great reputation and had asked that the contractor not appear before the Board. Ms. Clark said that if the variance is granted, she will probably ask them to finish this job due to the fact that she has quite a bit of money invested and would just like to be done with them without filing a lawsuit. Mr. Hutson said if the garage was in, it would be a different issue although he felt that perhaps this foundation could be moved.

Ms. Clark said that she has all of her yard equipment under tarps and when her daughter comes home every other weekend, she has to sleep in the living room, because her room is filled with belongings from the shed that the contractor tore down.

Mr. Kovacs asked if Ms. Clark had instructed the contractor to put the garage 3' closer to the lot line. Ms. Clark said that she had taken them to a neighbor's house and shown them exactly what she wanted. The contractor indicated that they could get a variance, which would give better access to the garage. The agreement was that the contractor would obtain all necessary permits and variances, and the homeowner would only be responsible for making sure that she approved of the finished product. Ms. Clark indicated that she had given this contractor \$5,800.00 after she had received approval for the rat wall. Ms. Clark also said that presently she is into this job in the amount of \$8,000.

Mr. Vleck asked if the load-bearing wall would have to be placed on the rat wall and Mr. Stimac said that was correct. Mr. Stimac explained that the proper construction technique is to put the load-bearing wall directly over the rat wall. Mr. Stimac also said that if the load-bearing wall were placed in the middle of the slab it would not be structurally correct. Mr. Vleck then asked how this could be corrected and Mr. Stimac said that in order to truly do it correctly, the rat wall would have to be removed as the slab and rat wall should be poured in one continuous pour. Mr. Stimac also said that if this foundation was poured in pieces, it would probably reduce the longevity of the slab.

Mr. Vleck said that he felt that the builder would be able to pull out the rat wall and put it back in the correct location. Ms. Clark said she was concerned because the weather was changing and also the builder does not believe he is at fault because the City approved the rat wall.

The Vice-Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are four (4) written approvals on file. There are no written objections on file.

**ITEM #8 – con't.**

Mr. Kovacs stated that he feels this is a two-fold problem, in that we have a builder who put the rat wall in the wrong location and the City who missed the fact that it was in the wrong location and approved this rat wall; and finally we have the homeowner who is caught in the middle. Mr. Kovacs also said that similar variances have been granted in the R-1E Zoning District based on the fact that the lots are small and getting in and out of the garage is difficult with the 6' side yard setback. Mr. Kovacs further stated that he does not feel it is fair to find the homeowner at fault, because basically she did not do anything wrong and the City should have caught the fact that the rat wall was in the wrong location and the contractor would have had to move it.

Ms. Clark said that the builder does not feel responsible because the cement was poured the next day due to the fact that the City approved the rat wall. Ms. Clark also said that her only recourse would be to sue the builder and she really does not have the means to take that course of action.

Mr. Vleck asked if the neighbor to the west of Ms. Clark approved of this request. Ms. Clark indicated that they do not speak English and at this point they only smile at each other. Ms. Clark also said that other neighbors have approved of this request.

Mr. Kovacs stated that one of the reasons he was in favor of this variance request was because of the mistake on the part of the City and he did not feel the petitioner should suffer for this mistake.

Ms. Clark also said that she had received a number from the City to file a complaint against this builder and she planned to not only file a complaint with the State but also with the Better Business Bureau.

Motion by Vleck  
Supported by Fejes

MOVED, to approve the request of Janet Clark, 90 Woodslee, for relief of Section 40.57.05 of the Zoning Ordinance to construct a detached garage within 3' of the side lot line where 6' is required.

- Location of rat wall approved by the City.
- Variance is not contrary to public interest.
- Variance will not cause an adverse effect to surrounding property.
- Compliance with the Ordinance would be unnecessarily burdensome.

Yeas: 4 – Fejes, Hutson, Kovacs, Vleck  
Nays: 1 – Gies

**MOTION TO GRANT VARIANCE CARRIED**

**ITEM #9 – GOLDEN GATE SHOPPING PLAZA, LLC, 2967 E. BIG BEAVER,** for relief of Paragraph G of Section 31.30.00 to construct an addition to an existing commercial building, which will result in a 41.7' setback to residentially zoned property where 75' is required.

Mr. Stimac explained that the petitioners are requesting relief of the Ordinance to construct a loading dock addition at the rear of an existing commercial building. The proposed addition on the north side of the building will result in a 41.7' setback to the north property line. The adjacent property to the north is in the R-1D (One-Family Residential) Zoning District. Paragraph G of Section 31.30.00 requires that no building be located closer than 75' to the property line when the property abuts a residential district.

Kim Patterson, Manager of Golden Gate Shopping Plaza and John Dinan of Golden Gate Shopping Plaza as well as David Kapusansky, representing Aldi Foods were present. Ms. Patterson stated that she and Mr. Dinan were present to show their support of this request. Ms. Patterson went on to say that five (5) years ago Golden Gate Shopping Plaza suffered a huge loss when Farmer Jack moved out of this center. Over the past five years they have attempted to find another tenant to take the place of Farmer Jack. Ms. Patterson said that they have been in negotiations with Aldi Foods for the past two years and are very pleased with the addition of this store.

David Kapusansky said that this is a unique issue relating to the loading dock. Mr. Kapusansky said that they are not looking to enlarge the dock area, but to enclose it to meet with today's standards regarding loading docks. Currently, this dock is obsolete and is in a state of disrepair. Mr. Kapusansky also indicated that it would not meet the sanitary standards required today. Mr. Kapusansky further stated that by enclosing this dock, the merchandise would be protected from the elements and rodents as well as to provide for the storage of pallets. The shape of the development does not allow for a semi to move up and back in, and to enclose the dock would benefit the public in terms of sanitation and noise pollution.

Mr. Hutson commented on the number of responses received from the residents on Albany. Ms. Patterson explained that they got a number of responses from both the residents to the north of this property as well as to the west of the center.

Mr. Vleck asked how wide the loading dock was. Mr. Kapusansky said that he thought it was 32'-10". Mr. Vleck asked if it was the width or length of the building. Mr. Kapusansky said that it was the length away from the building and the width is 18' from the edge of the dock to the existing transformers. Mr. Vleck asked if the transformers would have to be relocated and Mr. Kapusansky said that they would not. Mr. Vleck stated that the back of the building is not maintained very well with regards to the dumpsters and trash and is concerned about encroaching into the setback. Ms. Patterson indicated that through the negotiations with Aldi, there are also concessions that have been made and this area will have to be cleaned up and re-paved in order to meet Aldi's standards. Mr. Vleck also said that this addition will change the footprint of the building

**ITEM #9 - con't.**

and wanted to know what would happen to the dumpsters that are sitting out. Mr. Kapusansky said that Aldi's has a provision for keeping the dumpster in their enclosure. Ms. Patterson said that they have not dealt with the dumpster issue at this time.

The Vice-Chairman opened the Public Hearing.

Mr. John Dinan was present and stated that he wanted to indicate his support for this variance and felt that it would benefit the shopping center.

No one else wished to be heard and the Public Hearing was closed.

There are thirty-three (33) written approvals on file. There is one (1) written objection on file.

Mr. Vleck stated he would be against this variance as this is a large variance request and asked if variance would limit the petitioner to what was presented. Mr. Stimac stated that the Building Department has received plans for the addition and that the variance would be limited to what these plans depict and the additional construction drawings. Mr. Stimac also said that the petitioner is correct in saying that this dock would be 18' x 32'. Mr. Vleck was concerned about the setback going from 75' to 41'. Mr. Kapusansky said that this addition would not change the loading depth and that trucks have been unloaded in this area since 1974 and actually Aldi's would have fewer trucks coming into the area than Farmer Jack's did, approximately 9 – 12 trucks per week. Mr. Kapusansky said that this is a much smaller grocery store. Mr. Vleck asked if the extension of the loading dock could be made smaller. Mr. Kapusansky stated that it is presently set up for two trucks, one truck dock and one bay that would handle the trash right next to each other.

Mr. Vleck then asked if they would have to go in for a site plan approval and Mr. Stimac indicated that staff review of the scope of work did not warrant site plan approval. Mr. Vleck said that he understands exactly where the dock is going and is just concerned about such a large variance.

Mr. Hutson said that he was impressed with the fact that they had contacted the residents, which abut this shopping center. Mr. Kapusansky said that Ms. Patterson has been working with this shopping center for years and she wanted to make sure that the neighbors were aware of what was going on with the shopping center. Mr. Hutson also said that one of the neighbors, who abut the shopping center, was against this addition; however, he feels that the approvals outweigh the objections. Mr. Karpusansky asked about this objection and Mr. Hutson said that he also took the objection in consideration of this request. Ms. Patterson said that they had spoken to each neighbor and let them know exactly what improvements were going to be made.

**ITEM #9 – con't.**

Mr. Fejes asked if there were any safety issues regarding this addition. Mr. Karpusansky said that by being enclosed, it would be safer for employees and truck drivers due to the fact that they would not be dealing with the rain or snow, which would lessen the number of slip and fall accidents.

Mr. Kovacs thinks this variance request meets the guidelines of the restrictions of a variance in that it would help to protect the public health, safety and welfare of the surrounding residents. Mr. Kovacs also stated that he did not think this was a very large variance because the dock is existing and enclosing it would provide greater safety and health issues to the public.

Mr. Vleck asked about the other dumpsters on the property and asked if any regulations were in place to require these other dumpsters to be enclosed. Mr. Stimac said that he had not done an investigation on the site plan for the original construction of the shopping center, which he thought was built in 1972 or 1973. Mr. Stimac indicated that the requirements for enclosing dumpsters came into existence after that date. Mr. Stimac also said that these dumpsters would be considered legal non-conforming structures. Mr. Stimac further stated that they would look into moving the dumpsters rather than having them placed around the site in a hap hazard way.

Mr. Vleck also said that he feels that an enclosed dock would definitely benefit the neighbors, and would feel much more positive about this variance if he knew that the other dumpsters would also be enclosed. Ms. Patterson said that they would be very agreeable to working with the Building Department, if this was one of the requirements. Mr. Stimac also said that this is not one of the standard rectangular buildings, and if this building were constructed today, one of the requirements would be that any dumpsters would have to be enclosed. Mr. Stimac further stated that due to the age of the shopping center he believed that the dumpsters were on the site plan unenclosed when it was originally approved, and also that originally one dumpster was put out and now there are a large number of dumpsters out, because each tenant puts out a dumpster. Mr. Stimac said that the Building Department would be willing to work with the owner to find ways to clean up this area.

Motion by Kovacs  
Supported by Hutson

MOVED, to grant Golden Gate Shopping Plaza LLC, 2967 E. Big Beaver, relief of Paragraph G of Section 30.30.00 of the Zoning Ordinance to construct an addition to an existing commercial building, which will result in a 41.7' setback to residentially zoned property where 75' is required.

- Absent a variance, public health safety and welfare would be negatively affected.
- Variance is not contrary to public interest.
- Variance would not have an adverse effect to surrounding property.

**ITEM #9 – con't.**

Yeas: 4 – Gies, Hutson, Kovacs, Fejes  
Nays: 1 - Vleck

**MOTION TO GRANT VARIANCE CARRIED**

Mr. Vleck stated that the reason he was objecting to this variance request because he thinks this addition could have been designed in a way, which would have decreased the encroachment. Mr. Vleck does feel that this is an improvement to the shopping center and would encourage that the other dumpsters in the center be taken care of also. Mr. Kapusansky indicated that they plan to work on the other dumpsters as well.

**ITEM #10 – PAUL FLECK, 2805 RANIERI**, for relief of Section 30.10.05 to construct a patio enclosure addition, which would result in a 26' rear yard setback where 40' is required.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a patio enclosure addition on the rear of his home. The site plan submitted indicates a 26' rear yard setback to the proposed patio enclosure. Section 30.10.05 requires a 40' minimum rear yard setback in R-1D Zoning Districts.

Mr. Fleck was present and stated that he does not have a hardship that runs his land, however, he has a son with a medical condition, which requires them to protect his son from mosquitoes. Mr. Fleck said that an enclosure would allow him to enjoy being out in the summertime. Mr. Fleck explained that the property to the north is Troy Beaumont and the first 150' of this property is zoned "Environmentally Protected" and therefore he would never have a neighbor close enough to be affected by this addition. The neighbor to the east of Mr. Fleck's property as well as the neighbor to the west of his property do not object to this proposed addition. Mr. Fleck said that if he could he would put the addition closer to the east side of the home, but is unable to because the roofline would not match up and does not believe it would fit in well with the home. Mr. Fleck pointed out that they cannot put the addition on the west side of the home because there are large trees in this area, and he also believes that he has deed restrictions, which will not allow him to put up anything in the side yard. The structure itself would be built on site, and the sides would be cultured stone and windows.

The Vice-Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are five (5) written approvals on file. There are no written objections on file.

Mr. Kovacs asked what was on the east side of his home. Mr. Fleck said that it was the master bedroom. Mr. Kovacs then asked if there was a walk out in this location and Mr. Fleck said that the addition would be connected to the door wall in the kitchen, which would serve the same basic purposed as a walk out. Mr. Kovacs then asked if was

**ITEM #10 – con't.**

possible to put in a door on the east side and then put the addition in that location. Mr. Fleck said he did not believe that the east side would lend itself as easily to this construction because the roofline would be different. Mr. Kovacs then asked if the addition could be put in this location. Mr. Stimac said that he could legally build an addition in the area of the family room and Mr. Fleck said that his neighbors to the east would not approve of an addition on this side of the home. Mr. Kovacs said that he understood Mr. Fleck's concerns with the neighbors, however, it was his right to put the addition in this location. Mr. Kovacs then stated that he felt this was a very large variance request.

Mr. Fleck said that he feels his situation is unique in that his neighbor to the north is Troy Beaumont and if he thought that there would be neighbors behind him in the future, he would not be before the Board asking for a variance. Mr. Fleck also said that because this land was zoned as an Environmentally Protected, he felt very safe in assuming that this land would not be developed. Mr. Fleck also said that there is a risk regarding the land to the north, which is now a heavily treed area, in that if Beaumont were to develop the property they could eliminate many of these trees. Mr. Kovacs pointed out that he would still have a 150' buffer zone. Mr. Kovacs said that he understood that this was a very different type of lot, but was concerned because the granting of such a large variance could create a precedent. Mr. Kovacs also pointed out that another area is available for an addition, which would not require a variance. Mr. Fleck said that he understood this was a large variance request, but still feels his situation is quite unique and does not think that the zoning will change on the property behind him.

Mr. Vleck said that he had driven by this property and agreed that if the addition was put on the west side of the property a very large tree would have to be removed, however, he was also concerned because of the size of this variance request.

Ms. Gies asked what the measurements were for this addition. Mr. Fleck said that it is proposed to be 23' wide and 15' deep.

Mr. Vleck asked if there was a particular reason Mr. Fleck wanted the addition 15' deep. Mr. Fleck said that he was keeping this addition in a length to width ratio and believes this size of an addition would lend itself well as a rectangular room.

Ms. Gies asked if Marilyn Street would ever be opened. Mr. Stimac said that as long as this area to the north remains Environmentally Protected, he does not believe this street would be opened. Mr. Stimac also said that the property owners could petition to have the street vacated, which would give the property owners additional property. However, Mr. Stimac said that until the property to the north is actually developed, City Council would most likely keep their options open and not vacate Marilyn Street at this time.



**ITEM #10 – con't.**

Mr. Fleck said that he had seen plans from Troy Beaumont and he thought that they were going to put in a ring road around, however never mentioned tying into this residential street. Mr. Stimac stated he needed to clarify the fact that if the property to the north were developed as a single-family residential area, they could open Marilyn Street in order to serve this development. Mr. Stimac also said that he could not speak for City Council, but he thought it was good planning practice not to vacate this street until the property to the north was developed.

Mr. Hutson asked if the zoning classification, which made this property to the north Environmentally Protected, was a classification made by the City. Mr. Stimac said the action done to zone this property was done by City Council. Mr. Hutson then asked if this classification could be changed and Mr. Stimac said that it could. Mr. Hutson also asked if Beaumont owned this property and Mr. Stimac said that it was. Mr. Hutson told the petitioner that he sympathizes with the medical problem that Mr. Fleck's son has, however, he feels that if the zoning was changed on this property to the north it could then create a problem for future residents.

Mr. Kovacs asked how this property came to be zoned Environmentally Protected and how easy would it be to have the zoning changed again. Mr. Stimac said that the zoning could be changed as easily as any other zoning classification. Mr. Stimac said that Beaumont acquired 20 acres between their facility and the Ranieri sub and needed this area re-zoned to C-F (Community Facilities) to allow for the hospital to be built. Due to concerns and objections from the residents of the Ranieri Subdivision and other residents in the area, the entire property was not zoned C-F, but as a compromise they agreed to have 150' of the southern section of the property changed to the E-P (Environmentally Protected) Zoning classification to ensure there would be a buffer between the hospital and residential property. Mr. Stimac explained that it takes four (4) members of City Council to change the zoning classification of a property.

Mr. Fleck said that his home sits farther back on his property and he believes this is one of the reasons he needs a variance.

Mr. Kovacs asked how far this home was from the hospital. Mr. Stimac said that he thought it was probably about 800' from the existing hospital.

Mr. Kovacs then asked the petitioner what he would do if he did not get this variance. Mr. Fleck said that he would like to have some idea of what type of variance the Board would be more amenable to. Mr. Kovacs asked if there was any way this addition could be reduced and therefore the variance request would be decreased. Mr. Fleck said he would have to consult his wife to determine what size would be feasible. Mr. Kovacs said that he had a problem with this variance due to the fact that it is such a large request. Mr. Kovacs said that there are unique circumstances to this property, however, he feels that there is another solution.

**ITEM #10 – con't.**

Mr. Vleck suggested that Mr. Fleck might wish to table his request until the next meeting to allow for the benefit of a full board.

Mr. Kovacs stated that he felt that this addition could be made smaller and therefore would require a smaller variance.

Mr. Vleck said that he thought his lot was unique, but thought that a precedent would be set if such a large variance was granted.

Mr. Fleck did not see where this would create a precedent because his property backs up to the E-P Zoning. Ms. Gies explained that it is not the E-P Zoning, it is the fact that he is requesting a very large variance, when this addition could be built in a location that would not require a variance.

Mr. Kovacs agreed with Ms. Gies and said that this addition could be moved to the other side of the home and would not need a large variance. Mr. Fleck said that if he thought this solution made sense he would do it, but did not feel this was the right location for this addition.

Mr. Vleck asked if he wished to postpone this request. Mr. Fleck asked what type of plans he should come back with in order to have the Board grant this request. Mr. Vleck suggested that he come back with valid reasons as to why this addition could not be put in another area, and to explore the possibility of making this addition smaller. Mr. Fleck then asked how many votes would be required to grant his request and was told that four (4) affirmative votes are required.

Mr. Stimac suggested that when the petitioner comes back to the Board, he should come back with the reasons why he needs the addition, why the addition has to be this size, and why the addition cannot be placed in another area.

Motion by Kovacs  
Supported by Vleck

MOVED, to postpone the request of Paul Fleck, 2805 Ranieri, for relief of Section 30.10.05 to construct a patio enclosure addition, which would result in a 26' rear yard setback where 40' is required until the meeting of November 18, 2003.

- To allow petitioner the benefit of a full Board.
- To allow the petitioner the opportunity to explore if a smaller addition would be feasible.
- To allow the petitioner the opportunity to demonstrate to the Board, the reasons the addition must be in this location.

Yeas: All – 5

**ITEM #10 – con't.**

MOTION TO POSTPONE REQUEST UNTIL THE MEETING OF NOVEMBER 18, 2003  
CARRIED

**ITEM #11 – MR. & MRS. DEWITT, 4871 RIVERS EDGE**, for relief of Section 30.10.02 and Section 41.50.00 to construct a screened porch addition, which would result in a rear setback of 43'-2" to the wall where 45' is required, and a 42' minimum rear yard setback to the roof overhang where 45' is required.

Motion by Fejes  
Supported by Hutson

MOVED, to postpone the request of Mr. & Mrs. Dewitt, 4871 Rivers Edge, for relief of Section 30.10.02 and Section 41.50.00 to construct a screened porch addition, which would result in a rear setback of 43'-2" to the wall where 45' is required, and a 42' minimum rear yard setback to the roof overhand where 45' is required until the next meeting of November 18, 2003.

- To allow the petitioner the opportunity to be present.

Yeas: All – 5

MOTION TO POSTPONE REQUEST UNTIL THE MEETING OF NOVEMBER 18, 2003  
CARRIED

**ITEM #12 – DON BARTLETT, 150 FLORENCE**, for relief of Section 40.57.04 to construct a freestanding gazebo, which would result in a total area of all accessory buildings to 1,254 square feet where 662 square feet are allowed; relief to place this building in a side yard location where Section 40.57.03 limits the location of accessory buildings to rear yard locations and, also approval under Section 40.57.10 which requires Board of Zoning Appeals approval for the placement of a freestanding gazebo.

Mr. Stimac explained that Petitioner is requesting relief of the Ordinance to construct a freestanding gazebo. The application submitted indicates construction of a 207 square foot gazebo located in the side yard. The site plan also shows an existing 1047 square foot detached garage, which would bring the total area of all accessory buildings to 1,254 square feet. Section 40.57.04 limits the area of all accessory buildings to 600 square feet or one-half the ground floor area of the main building whichever is greater. The existing house footprint is 1,324 square feet; therefore, the total area of accessory buildings is limited to 662 square feet.

Also, Section 40.57.03 of the Ordinance prohibits the placement of an accessory structure in any yard except a rear yard and Section 40.57.10 requires the Board of Zoning Appeals approval for the placement of a freestanding gazebo.

**ITEM #12 – con't.**

Mr. Fejes asked if this was a non-conforming house. Mr. Stimac indicated that the size of the garage vs. the house is probably a legal non-conforming issue, but prior to 1987 a garage could be built equal to the size of the main structure. Mr. Stimac said that he thought that the garage was constructed before 1987.

Mr. Kovacs asked if the gazebo were to be approved, if the petitioner would then have the ability to tear down the gazebo and put a shed up instead. Mr. Stimac said that if the language of the approval would indicate that the variance was granted for a 207 square foot open sided gazebo that would limit the petitioners' ability to only a gazebo.

Mr. & Mrs. Bartlett were present. Mr. Bartlett stated that the problem is that they have a power line that runs along the back of their yard and also runs on the side of their yard. Mr. Bartlett also said that if the gazebo were attached to the back of their home it would create a very small yard, and a large number of trees would have to be cut down if the gazebo was moved. Mr. Bartlett pointed out that his home was built many years ago and is the only home that runs perpendicular to the street. Mr. Bartlett also pointed out that the gazebo would interfere with the power lines if moved to either the back or other side of their home. The placement of the gazebo in the side yard would provide screening from the neighbors because of the large trees, and Mr. Bartlett considers this more of a landscape feature.

The Vice-Chairman opened the Public Hearing.

Mr. Wayne Ferrari, 215 Florence Drive, was present and said that his property is kitty corner to the southwest of Mr. & Mrs. Bartlett's property. Mr. Ferrari was in support of this request.

No one else wished to be heard and the Public Hearing was closed.

There are two (2) written approvals on file. There are no written objections on file.

Mr. Kovacs said that he thought this was one of the best presented requests he had seen and thanked the petitioner for submitting such a complete plan.

Motion by Kovacs  
Supported by Vleck

MOVED, to grant Don Bartlett, 150 Florence, relief of Section 40.57.04 of the Zoning Ordinance to construct a 207 square foot freestanding gazebo located in the side yard, which would result in a total area of all accessory building to 1,254 square feet where 662 square feet are allowed; and, also approval under Section 40.57.10 which requires Board of Zoning Appeals approval for the placement of a freestanding gazebo.

**ITEM #12 – con't.**

- Variance is not contrary to public interest.
- Variance would not have an adverse effect to surrounding property.
- Absent a variance significant natural features would be negatively affected.
- Variance would not establish a prohibited use within a zoning district.

Yeas: All – 5

**MOTION TO GRANT VARIANCE CARRIED**

**ITEM #13 – CORDELL CRAIG, 366 W. MAPLE (PROPOSED ADDRESS)**, for relief of Section 23.30.04 to construct a car wash with the stacking lane located right along a property line adjacent to residentially zoned property, where 25' is required; and, also for relief to construct this building with a 5' side yard setback where Paragraph E of Section 31.30.00, requires a minimum 10' side yard setback.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a car wash. Section 23.30.04 of the Zoning Ordinance requires that drives providing stacking spaces for car washes be a minimum of 25' from any Residential District. A previously submitted plan showed these stacking spaces located 12' from the east property line. A variance to allow the 12' where 25' is required was approved by the Board in May of 2002. New plans have now been submitted that indicate that the stacking lane will be located right along the property line at the northeast corner of the site where it abuts residentially zoned property.

In addition, the petitioner's plan indicates that the building will be located 5' from the west property line. Paragraph E of Section 31.30.00 requires a minimum 10' side yard setback when a B-3 (General Business) zoned site abuts an M-1 (Light Industrial) zoned site. A similar variance was approved by the Board in February of 2002, however, the petitioner failed to obtain the necessary building permit within the one year time frame.

Ms. Gies asked why the petitioner is returning again to the Board. Mr. Stimac indicated that the first approved plan had one stacking lane with a 12' distance from the stacking lane to the residential zoned property. The petitioner is now asking to have one lane of traffic that goes all the way around and that this stacking lane be located right along the property line adjacent to residentially zoned property. Mr. Stimac also said that the Building Department has been in the processing of reviewing these plans and while looking at the new site plan, discovered that Mr. Craig wished to change the location of the stacking lane.

Mr. Hutson asked if the only change in the revision was the location of the stacking lane. Mr. Stimac said that was correct. Mr. Hutson asked Mr. Craig why he made this change in his plans. Mr. Craig indicated that he had misunderstood the variance received from the Board last year. He thought that the stacking lane would be located

**ITEM #13 – con't.**

right next to the property line and found out during the site plan approval process that the Board had granted a 12' setback. Mr. Craig also said that he thought that the 12' setback would make it very difficult for cars to make this turn and felt that the 0' setback was a much safer option.

Mr. Kovacs asked if this would increase the number of cars. Mr. Craig said that the amount of cars would remain the same, but the 0' setback would provide an exit lane if there were any accidents, or if a car just needed to move out of the lane. Mr. Craig said this is what he meant last year, but obviously did not make himself clear at that time.

Mr. Fejes asked if this variance would affect Thunderbird Lanes in any way. Mr. Craig said it would not affect them and that their original opposition to this request was because Mr. Craig wanted a 0' setback for the building also. Mr. Craig pointed out that the building will remain with a 5' setback, it is only the location of the stacking lane that is changing.

Mr. Vleck asked about the setback along the residential property. Mr. Stimac said that a 25' setback is only required where commercial property abuts residential property and Mr. Craig is asking for a 0' setback.

The Vice-Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are no written approvals on file. There is one (1) written objections on file.

Motion by Vleck  
Supported by Fejes

MOVED, to grant Cordell Craig, 366 W. Maple (proposed address), relief of Section 23.30.04 of the Zoning Ordinance to construct a car wash with the stacking lane located right along a property line adjacent to residentially zoned property, where 25' is required; and, also for relief to construct this building with a 5' side yard setback where Paragraph E of Section 31.30.00 of the Zoning Ordinance requires a minimum 10' side yard setback.

- Retention pond is between this stacking lane and residential property.
- Variance will not have an adverse effect to surrounding property.
- Variance is not contrary to public interest.
- Variance applies only to the property described in this petition.

Yeas: All – 5

MOTION TO GRANT VARIANCE GRANTED

**ITEM #14 – WHITE CHAPEL CEMETERY, 621 W. LONG LAKE**, for relief of Section 40.57.06 to construct a 32' tall roof mounted antenna on an existing building where 12' is allowed.

Mr. Stimac explained that the petitioners are requesting relief of the Ordinance to construct a 32' tall roof mounted antenna on the existing building at 621 W. Long Lake. Section 40.57.06 of the Zoning Ordinance limits the height of roof-mounted antennas to not more than 12' above the highest point of the roof. The site plan submitted indicates that the antenna, which is designed to look like a flagpole, will extend 32' above the roof surface.

Krysten Palko, of Richard Connor Riley & Associates, L.L.C. was present and stated that they have been working on finding a location for this antenna for approximately three (3) years. Ms. Palko indicated that the reason this site was chosen is because the surrounding property is highly residential and that this area creates problems for Sprint and AT&T regarding coverage for their customers and this location will provide more complete coverage for customers. Ms. Palko also said that Sprint and AT&T often coexist on a tower. Ms. Palko further indicated the antenna would be located on the top of the mausoleum and would appear to be a flagpole, which would minimize the visual impact of the antenna to surrounding areas. Ms. Palko pointed out that this building is 64' high with a 8' high parapet wall that will further cover the appearance of this antenna and furthermore from a distance the antenna will look like a flagpole at the top of the mausoleum.

Mr. Kovacs asked why other carriers do not use this type of design for their wireless antennas and Mr. Stimac said that although it will look like a flagpole from a distance it is actually 26" in diameter.

Mr. Vleck asked about the equipment required for this antenna and Ms. Palko said that all of the necessary equipment will be stored inside the mausoleum and will be concealed from site.

Mr. Vleck also asked why other carriers do not use this type of antenna and Ms. Palko said that type of antenna loses some of the capabilities that the typical antenna would provide, and also that it is more expensive to construct.

The Vice-Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There is one (1) written objection on file. There are no written approvals on file.

Motion by Vleck  
Supported by Kovacs

**ITEM #14 – Con't.**

MOVED, to grant White Chapel Cemetery, 621 W. Long Lake, relief of Section 40.57.06 to construct a 32' tall roof mounted antenna on an existing building where 12' is allowed.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Variance will not establish a prohibited use in a specific Zoning District.

Yeas: All – 5

MOTION TO GRANT VARIANCE CARRIED

**ITEM #15 (ITEM #3) – JAMES HARRIS, 2888 BINBROOKE**, for relief of Section 30.10.02 to construct a master suite addition on the west side of his home, which would result in a 6'-2" side yard setback where a minimum 10' minimum side yard setback is required.

The Vice-Chairman moved this item to the end of the agenda, Item #15, to allow the petitioner the opportunity to be present.

Petitioner is requesting relief of Section 30.10.02 of the Zoning Ordinance to construct an addition to his home. The site plan submitted indicates a master suite addition on the west side of the home resulting in a 6'-2" side yard setback on the west side and a total of both side yards of 23'-2". Section 30.10.02 requires a 10' minimum side yard setback and a total of both sides of 25' in a R-1B Zoning District.

Motion by Vleck  
Supported by Kovacs

MOVED, to postpone the request of James Harris, 2888 Binbrooke, for relief of Section 30.10.02 to construct a master suite addition on the west side of his home, which would result in a 6'-2" side yard setback where a minimum 10' minimum side yard setback is required.

- To allow the petitioner the opportunity to be present.

Yeas: All – 5


MOTION TO POSTPONE REQUEST UNTIL MEETING OF NOVEMBER 18, 2003  
CARRIED

Mr. Stimac mentioned that Mr. Maxwell will not be able to attend the meeting of November 18, 2003 and asked the Board if they would consider moving the meeting from Tuesday, November 18<sup>th</sup> to Wednesday, November 19, 2003. A discussion



ensued and it was determined that the meeting would have to remain on November 18<sup>th</sup> due to the fact that other Board members would not be able to attend on the 19<sup>th</sup>.

The Board of Zoning Appeals meeting adjourned at 10:15 P.M.

  
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Marcia Gies, Vice-Chairman

  
\_\_\_\_\_  
Pamela Pasternak, Recording Secretary

MS/pp